IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8499 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ ELECTRICITY BOARD - Petitioner(s)

Versus

SASHIKANT JAI-MANISHANKER JOSHI - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/01/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article-227 of the Constitution of India,

praying for quashing and setting aside the impugned order dated 29.9.1988 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.1 of 1986. The Industrial Tribunal while allowing the said reference has held that the petitioner may be continued in service upto the age of 60 years in the same manner as in the case of Mr.M.I.Trivedi in Reference (IT) No.969 of 1984 and the petitioner should be given all consequential benefits.

2. While filing the present petition, the petitioner has made averment in the petition that the Tribunal has placed reliance on Reference (IT) No.325 of 1981 and Reference (IT) No.969 of 1984. Both these awards have been challenged by the petitioner by way of Special Civil Application No.274 of 1984 and 5979 of 1985 respectively. It is further stated that the Tribunal has placed reliance on

the decision of the Tribunal dealing with the question of Assistant Secretary. The Industrial Tribunal, Baroda, decided the said reference on 25.5.1987 and directed that Shri B.S.Shah, Assistant Secretary, was entitled to serve upto the age of 60 years and he should be continued in service and given all benefits. Against the said award, Special Civil Application No.3948 of 1987 has been preferred by the Board, and this Court vide order dated 11.8.1987 issued rule and granted interim stay in terms of para-12(b) of the said petition. The said petition was disposed off on the basis of letter dated 24.12.1998 produced by the Board by virtue of which, the said petition became infructuous.

3. This petition was admitted and rule was issued on 26.12.1988. This Court has passed a detailed order on 16.2.1989 and interim relief in terms of para-11(b) was granted on the

condition that the petitioner would calculate the amount payable to the workman in accordance with the impugned order of the Industrial Tribunal on the premise that the age of superannuation of the workman was 60 years and shall keep the said amount in a separate account with the petitioner. The petitioner would pay interest on the said amount at 12% per annum. Interest would be paid quarterly i.e., at the expiry of every three months regularly to the respondent – workman. The same can be deposited directly in the account of the workman, number of which would be supplied to the petitioner. The arrangement was ordered to be continued till the final disposal of the petition.

4. Subsequent to the aforesaid order, the petitioner has moved Civil Application No.1928 of 1989 and the said Civil Application came to

be disposed of on 22.3.1993. While disposing of the said Civil Application, this Court has directed the petitioner to calculate the amount of difference on the basis that the workman was entitled to other benefits also and after calculating the amount of difference, the respondent Board would calculate the amount of interest on the amount of difference at the rate of 12% till April 30, 1993 and would credit the said amount in the account of the workman. The Court has further observed that the aforesaid exercise would be completed by the respondent Board latest by April 30, 1993. The Court has also made it very clear that upon non compliance with the direction of the Court, action for contempt of Court may be initiated against responsible officer.

5. When this matter is taken up for hearing it has been stated on behalf of M/s.Nanavati

Associates that they are not appearing in this matter and they have already informed the petitioner Board. The Court has taken note of this aspect in its order dated 17.11.2005 and made it very clear that if no alternative arrangement is made, the matter will be proceeded with and decided on its own merits. Despite this order, no arrangement is made and nobody appears on behalf of the petitioner Board. Since the matter is of 1988, the Court has no other alternative but to proceed with the matter. The Court has called for the copy of the order of Special Civil Application No.3948 of 1987. This was also the case of the Assistant Secretary and the issue involved in the said matter was also similar to one which is involved in the present petition. In that case letter dated 24.12.1998 was produced on record and in view of the said letter, the Court has dismissed the petition vide its order

dated 17.2.1999 on the ground that the petition has become infructuous. Here in the present case, nobody appears on behalf of the petitioner, nor any letter has been produced. However, similar treatment should have been given by the petitioner to the respondent of this petition. Even by virtue of the order passed by this court, the respondent has been granted interest on the amount which is kept in separate account of the respondent. The Court, therefore, directs the petitioner to give the same treatment to the respondent which has been given to the petitioner of Special Civil Application No.3948 of 1987. Interim order passed by this Court is directed to be read in light of order passed by this Court on 17.2.1999 in Special Civil Application No.3948 of 1987. It is made clear that if the treatment similar to one which was given by the petitioner – Board to the petitioner of

Special Civil Application No.3948 of 1987 is prejudicial to the interest of the present respondent, it is open for the respondent to approach before this Court.

6. Subject to the aforesaid directions and observations, this petition is accordingly disposed off. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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